

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 8**

**LUTHER HOME OF MERCY**

**Employer**

**and**

**Case No. 8-UC-346**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION, SEIU, DISTRICT 1199 HEALTH CARE  
AND SOCIAL SERVICE UNION, AFL-CIO**

**Petitioner**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this case,<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The parties have filed briefs which have been duly considered.

3. The Union-Petitioner, herein referred to as Petitioner, is a labor organization which claims to represent certain employees of the Employer.

By its petition, the Petitioner seeks to clarify the existing collective bargaining unit to include seven supported living providers who provide one-on-one home care to clients. The Petitioner maintains that the supported living providers provide the same services to clients off campus that direct care staff employees afford residents living on the campus. The Employer takes the contrary view, asserting that the employees at issue do not constitute an accretion because they lack an overwhelming community of interest with the pre-existing unit, have their own group identity and could constitute a separate appropriate unit. The Employer additionally argues that the petition is barred by its current collective bargaining agreement with the Petitioner.

Initially, the Employer's procedural argument that the petition is barred by the existing contract is erroneous since the classification at issue, the supported living provider, was not in existence when the contract was negotiated and executed. The Board has held that unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals within a newly established classification. **Union Electric Company, 217 NLRB 666, 667 (1975).**

Secondly, the Employer's argument that the proposed accretion is inappropriate because the Petitioner has not rebutted the single facility presumption is similarly misplaced. Generally, the presumption of the appropriateness of a single facility unit is utilized during initial organizing efforts and not with respect to unit clarification.

Nevertheless, I agree with the Employer's argument that an accretion is inappropriate because the employees sought to be accreted herein, the supported living

providers, do not share a sufficient community of interest with the existing bargaining unit.

Since 1928, the Employer has operated a residential care facility in Williston, Ohio which provides services for mentally retarded and developmentally disabled adults. The Employer's facility accommodates 129 residents. Its staff of approximately 300 includes between 176 and 200 employees who are represented by the Petitioner. The current collective bargaining agreement between the Employer and the Petitioner is effective between July 1, 1999 and June 30, 2002. The present unit as described in the contract and the petition is as follows:

All food service aides, cooks, housekeeping aides, laundry aides/sorters, laundry aides/transporters, maintenance aides, maintenance workers, habilitation aides, activities aides, recreational aides, and direct care staff employees, excluding all seasonal, temporary and casual employees, confidential employees, office clerical employees, managerial employees, technical employees including licensed practical nurses, all professional employees including registered nurses, guards and supervisors as defined in the Act, and all other employees.

The Williston location or campus contains eight residential cottages,<sup>2</sup> a habilitation center, a recreation building and several ancillary support services buildings including a maintenance building, laundry building, vehicle storage areas, guest house and corporate office building. The habilitation center is the locus for therapeutic and recreational services. The recreation building includes a gymnasium and a pool.

All employees listed in the above-described unit perform work that impacts the campus. Maintenance employees work on the cottages and other buildings on the campus. Laundry is performed in a separate building on the campus and then delivered to the various cottages and the habilitation center. Meals are prepared in the kitchen

located in cottage six. Meals not served in cottage six are transported to the remaining cottages. Recreation services are provided by recreation aides either in the habilitation center or in the individual cottages. Habilitation aides, along with the therapists perform therapy treatments in both the habilitation center and individual cottages. Direct care staff supervise and care for residents of the cottages under the immediate supervision of a cottage supervisor. They also assist clients in achieving their habilitative goals: those tasks implicit in every day living including personal hygiene, grooming, and home maintenance chores.

The record reveals that members of the existing unit provide services off-campus only if residents are on a trip. In addition, while approximately 40 of the 129 residents leave campus weekdays for employment at the Riverview Workshop, the staff is not responsible for those clients during their workday except to occasionally provide transportation.

In the Spring of 2000, the Employer initiated a Supported Living Program involving off-site client home-based care for individuals with mental retardation or developmental disabilities. This program is administered through the Employer's Outreach Ministries Department. At the time of the hearing, the Employer provided services to five clients by seven supported living providers.

The duties of the supported living providers are similar to those of the direct care staff but the former classification only operates at the client's home while the latter's duties are generally confined to the campus. In addition, although the direct care employee is subject to the immediate scrutiny of a cottage supervisor, the supported living provider functions one-on-one with the client without supervision being present.

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<sup>2</sup> A ninth cottage is nearing completion.

In addition, unlike the direct care staff, the job requirements for the supported living provider specifies one year of experience in the area of mental retardation and developmental disability as well as a valid driver's license and proof of insurance.

"An accretion, as the term has been employed by the Board and the courts, is merely the addition of new employees to an already existing group or unit of employees. In determining whether a new facility or operation is an accretion, the Board has given weight to a variety of factors including integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history and interchange of employees. In the normal situation some elements militate toward and some against accretion, so that a balancing of them is necessary. Where the new employees are found to have common interests with members of an existing bargaining unit and would have been included in the certified unit or covered by the current collective bargaining agreement an accretion is found to exist." **Gould, Inc., 263 NLRB 442,445 (1982)** [citations omitted]. See also, **Compact Video Services, Inc., 284 NLRB 117 (1987)**.

In **Towne Ford Sales, 270 NLRB 311 (1984)**, the Board stated that it has followed a restrictive policy in finding an accretion because such a determination forecloses the employees' basic right to select their bargaining representative. The Board further stated that it will not, under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit, to be included in an overall unit without allowing these employees the opportunity of expressing their preference in a secret election. See also **Armco, Inc., 279 NLRB 1184 (1986)**.

The Board has identified several factors as especially important in finding whether an accretion is appropriate. One of these elements is the degree of interchange of employees. No weight is assigned to the fact that interchange is feasible when in fact

it does not occur. Another important element is whether the day-to-day supervision of employees is the same in the group sought to be accreted. This element is particularly significant since the day-to-day problems and concerns among employees at one location may not necessarily be shared by employees who are separately supervised at another location. **Towne Ford Sales, supra at 311-312.**

Looking first at the integration of the operations in question, although the services to clients performed by direct care staff at the campus and by supported living providers at clients' homes are similar in nature, there is no record evidence that supported living providers ever bring their residents to the campus for services, or that campus residents have ever received the services of employees in the supported living classification. Also, none of the current supported living providers previously worked in the existing bargaining unit. Thus, no interchange of employees takes place.

Supported living providers do not attend cottage meetings, nor do direct care staff attend the monthly meetings for the Supported Living Provider Program. Moreover, inasmuch as employees in these classifications work at separate locations there is no contact between members of the Direct Care Staff and that of the Supported Living Program. Thus, there is no apparent interaction unit employees and the supported living providers.

With respect to the issue of supervision, while direct care employees work under the immediate direction of the cottage supervisors, supported living providers operate independently. In addition, the classifications of direct care staff and supported living providers fall within separate divisions of the Employer's organizational plan. The record reveals that while direct care employees are under the authority of Theresa

Cousins, the Assistant Administrator for Program Services, the supported living providers are within the jurisdiction of Terry Rodriguez, the Assistant Administrator for Outreach Ministries.

With respect to geographic proximity, the supported living providers service clients at locations which range between six and twenty-seven miles from the campus. Such a geographic separation has been found to be a factor weighing against a finding of accretion. **Super Valu Stores, 283 NLRB 134 (1987).**

Although employees in the classifications of direct care staff and supported living provider perform similar services for their respective clients, their working conditions, skills, and functions are not identical. Services to residents on campus are provided twenty-four hours a day, seven days a week. Each cottage has a three-person supervisory team. Direct care staff work in an approximate ratio of four residents to each employee. Bargaining unit employees, including direct care employees work regular designated shifts.

In comparison, supported living providers' schedules are dependent on, and vary according to the individual needs of the client. The evidence reveals a range of care for current clients from a low of ten hours per week to a peak involving a client who receives fourteen hours of care a day. The latter requires two supported living providers working separate coverage periods. Supported living providers can adjust their schedules without prior supervisory approval to accommodate such contingencies as doctor's appointments or other excursions required by their clients.

The licensing, funding , and operating regulations of the Williston campus and the Supported Living Provider Program also vary. The campus program is licensed as a

nursing home by the Ohio Department of Health and is funded through Medicare. The Supported Living Provider Program is licensed by the Ohio Department of Mental Retardation and Developmental Disabilities and funded by individual contracts through various county Boards of Mental Retardation and Developmental Disabilities. With respect to the Supported Living Program, the Employer applies to provide services and competes for clients with other licensed providers. In addition, individual clients have the ability to terminate the contracts at any time.

With respect to labor relations, applications in both classifications are handled by the Human Resource Office. Thereafter, however, their terms and conditions of employment are subject to the scrutiny of separate administrative divisions. These divisions conduct their own separate monthly meetings with employees. Inasmuch as the Supported Living Program is a recent addition to the Employer's services, those employees have never been represented by a union. In addition, the testimony of Theresa Cousins, the Assistant Administrator for Program Services, reveals that the Employer, for some time, has operated a semi-independent living home called "Our House" located one quarter mile from the campus. According to Cousins, in approximately 1993-1995, the Petitioner rejected the Employer's attempt to assign bargaining unit members to the facility.

On the basis of the foregoing, and the entire record I conclude that the supported living providers are not an accretion to the existing bargaining unit. While the record reveals employees in both classifications perform direct care for their respective clients, the supported living providers do so on a one-on-one basis without supervision at a location removed from the main campus. In addition, while the hours of work of the



direct care staff are fixed, the supported living providers' hours are flexible as necessitated by the varying needs of their clientele. There is no evidence of interchange or interaction between bargaining unit employees and those in the Supported Living Provider Program. The daily operation of the campus and the Supported Living Program are separate and autonomous. The day-to-day control and supervision of matters of interest to the direct care staff and the employees in the Supported Living Program are handled within their separate divisions. The ultimate authority over both divisions by the Executive Director does not detract from the significance of the independent supervision or the lack of interchange between the supported living providers and the employees in the unit.

I find that the other factors in the instant case are insufficient to establish accretion in the face of such separate daily supervision and lack of interchange. **Towne Ford Sales**, *supra*; **Silver Court Nursing Center**, 313 NLRB 1141 (1994). Accordingly, I find the supported living providers do not constitute an accretion to the existing unit.

Therefore, on the basis of the foregoing and the record as a whole, I have concluded that there is not an adequate basis to include the supported living providers in the existing unit without an election and accordingly, I shall dismiss the petition.

### **ORDER**

It is hereby ordered that the petition in this case be, and it hereby is, dismissed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 – 14<sup>th</sup> Street N.W., Washington, D.C. 20570.

This request must be received by the Board in Washington by April 4, 2001.

Dated at Cleveland, Ohio this 21st day of March 2001.

/s/ Frederick J. Calatrello

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Frederick J. Calatrello  
Regional Director  
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